

**Amendments to the Claims:**

This listing of the claims will replace all prior versions and listings of claims in the application:

**Listing of Claims:**

1 (Canceled)

2 (Currently Amended): The negative electrode active material in accordance with claim [[1]] 6, wherein the average thickness of said surface layer is 1 to 100 nm.

3 (Currently Amended): The negative electrode active material in accordance with claim [[1]] 6, wherein the average thickness of said surface layer is 1 to 10 nm.

4 (Currently Amended): The negative electrode active material in accordance with claim [[1]] 6, wherein said surface layer has a thickness in the range of  $\pm 50\%$  of the average thickness.

5 (Canceled)

6 (Currently Amended): A negative electrode active material for a non-aqueous electrolyte rechargeable battery capable of absorbing/desorbing lithium comprising:

an inner layer comprising a Si phase and an alloy phase containing Si and at least [[an]] one element selected from the group consisting of Ti, Co, Mg, Zr, V, Mo, W, Mn and Fe; and a surface layer comprising silicon oxide of 0.2 to 1,000 nm in average thickness formed on said inner layer, wherein the active material is mainly composed of Si.

7 (Currently Amended): The negative electrode active material in accordance with claim [[1]] 6, which is in the form of a thin film or powder.

8 (Canceled)

9 (Currently Amended): A non-aqueous electrolyte rechargeable battery ~~using~~ including a negative electrode active material capable of absorbing/desorbing lithium comprising:

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an inner layer comprising a Si phase and an alloy phase containing Si and at least one element selected from the group consisting of Ti, Co, Mg, Zr, V, Mo, W, Mn and Fe; and

a surface layer comprising silicon oxide of 0.2 to 1,000 nm in average thickness formed on said inner layer, wherein the active material is mainly composed of Si.

10-12 (Canceled)